681 among the Khevsur, the loss of an arm or leg was valued at twenty-four cows, that of a finger, from five cows for the thumb down to one cow for the little finger. Face wounds were measured with grains of wheat, and the fine calculated accordingly. Theft (usually involving horses or cattle) inside one's own community was punished by the obligation to repay the value of the stolen property several times over, or to pay an indemnity to the ruling prince. Stealing from other groups was regarded as an accomplishment rather than a crime, and a young man who had never managed to steal a horse would not easily find a wife.

695 Justice was administered by community courts in which the oldest sat in judgment, or by specially elected mediators (Georg. shuak'atsi) who had the confidence of both plaintiff and defendant, and whose decision was always accepted as final. Witnesses were called and oaths were taken upon sacred objects (in the N. W. Caucasus, often a blacksmith's anvil, later replaced by the Koran), or in the name of ancestors, sanctuaries, etc. In difficult cases, various types of ordeals were resorted to.

577 As characteristic traits of a more general nature in Caucasian life, hospitality, respect for superior age, and--especially among the mountaineers--susceptibility to offence and vengefulness must be mentioned.

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of a husband never justifies a wife to divorce him.[21] In fact, the inequality was even far greater: although a husband's wilful act of adultery was not sufficient grounds for a divorce, rape suffered by an innocent wife was.[22] Other legal grounds for a divorce were sterility of the wife or the fact that she was "capable" of giving birth only to girls,[23] which is but another form of "sterility."

A divorcée has no right to a special alimony. Instead, she has her own personal property and especially her *kebin*.[24]

If a wife abandons her husband for any reason other than the few legal grounds granted her, she not only must return all engagement and wedding gifts received from her husband, but her family must also return the entire *kalym*. In fact, she may not re-marry till the *kalym* is refunded. Sometimes the husband out of mere malice refuses the *kalym*, so that the divorcée must remain unmarried for the rest of her life.[25]

The children remain in the father's household, even if he should soon die after the divorce,[26] the guardianship always remaining in the male line.

According to Lesghian customary divorce laws, which, on the whole, are in harmony with the *šarī'a*,[27] the female mate is again at a disadvantage. An *adat* for North Tabassaran says that "the husband has the right to divorce his wife at any time... But a wife may abandon her husband only if he is impotent, or if he has a contagious disease, or, finally, if he is unable to support her."[28] The disadvantage lies in the restricted legal grounds justifying the women to abandon their husbands and the almost unlimited possibilities of a justified divorce of the men. However, the expression "at any time" in this *adat* is an exaggeration. If a husband divorces his wife unjustifiably, he must pay the sum promised (*kebin*) and forfeits the *kalym*. If the wife abandons her husband for any other reason than the three grounds enumerated, she loses her right to the *kebin* and her family is obliged to refund the *kalym*.[29] Of course, if the husband is willing to pay the *kebin* and lose his right to a refund of the *kalym*, he may divorce her, literally, at any time.

Another occasion for divorce is the so-called *khatun-tallkh*. It is a common form of oath in Daghestan, which only a married man can take. The husband declares himself ready to dismiss his wife if he swear falsely. If he has several wives, he must specify which wife he will dismiss in case of perjury.

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[21] Leontovič, II, p. 173, §§ 150, 152.

[22] Leontovič, II, p. 172, § 143.

[23] Grabovskij, "Ekonomičeskij i domašnij byt, etc.," p. 21.

[24] Leontovič, II, p. 169 f, § 119; p. 176, § 172. The special decision of 1862 in this regard seems to be an imitation of the Islamic *kebin*.

[25] Leontovič, II, p. 175, § 166: "čtoby razvedennaja žena ne byla 'ni emu, ni drugomu.'" See also Grabovskij, *op. cit.*, pp. 51 f.

[26] Grabovskij, *op. cit.*, p. 53.

[27] Kovalevskij, *Zakon*, II, pp. 199 f.

[28] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1875), pp. 32 Kovalevskij, *Zakon*, II, p. 199.

[29] "Adaty Južno-Dagestanskich Obščestv," *l. c.*

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The *khatun-tallkh* is a much stronger oath than any other in Daghestan, even stronger than an oath on the Koran. The wife, therefore, may be the innocent victim of her husband's falsehood.

The *khatun-tallkh*, according to Robertson-Smith (*Kinship in Early Arabia*, p. 77) and Kohler ("Ueber das vorislamitische Recht der Araber," *Zeitschr. f. vergl. Rechtsw.*, VIII [1888], pp. 246, 251) is a pre-Islamic oath incorporated into Islamic law. Kovalevskij, who cites both authors, maintains that Islamic missionaries are responsible for the practice in Daghestan.[30] We cannot deny the possibility of Islamic origin, but mere similarity is no sufficient proof. If such argumentation were methodologically indisputable, we should be justified in concluding that the levirate, polygyny, divorce, and other institutions have been imported from Arabia. All that we wish to say is that it is not at all so certain that the Caucasian *khatun-tallkh* is of Islamic origin, as Kovalevskij would have us believe. An oath, by its very nature, seeks the strongest sanction possible. Now, we have shown, when treating of the attitude of the Caucasians toward plurality of wives, how highly a wife is esteemed. She is, we said, the best family investment. To be forced to surrender her would therefore be a very efficient sanction against perjury. It may very well be the high esteem for the value of a wife and the need of a strong sanction that gave rise to the *khatun-tallkh* long before Islamism appeared on Caucasian soil, and perhaps belongs to a common substratum of ancient Arabian culture and Caucasian customary law.

Although the question regarding the guardianship of children after divorce has not been studied, we may conjecture that Lesghian *adats* restrict the right to the father alone. Guardianship, as a general rule, in primitive societies, follows the norms of inheritance: in patrilineal families the children remain with the father, in matrilineal, with their divorced mother. Since inheritance is fundamentally patrilineal according to ancient customary law of the Lesghians, we feel justified in making this hypothetical assumption.[31]

The women of the neighbouring peoples enjoy about the same rights of divorce as do the North Caucasian women. Everywhere they are at a disadvantage.

SOUTHERN CAUCASIANS. Eristov tells us that during his time the Georgian mountain tribes would divorce their wives for the least provocation. It happened now and then that a week after marriage the bride would not turn out to be as pleasing as the groom had imagined, or as good a housekeeper as the groom's family hoped for; such a disappointment was sufficient to occasion a divorce.[32] She could also be dismissed for superficiality, theft, or laziness.[33]

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[30] Kovalevskij, *Zakon*, II, p. 127.

[31] Cf. Abercromby, *op. cit.*, p. 97, who believes that the Avars do not have a fixed rule in this regard.

[32] Eristov, *op. cit.*, pp. 112 f.

[33] Seidlitz, "Gemeinde- und Familienleben der Chewsuren," *Das Ausland*, 1891, No. 17, p. 336. If the woman had a son, it was much more difficult to divorce her (a custom of the Pshavs), cf. Makalatija, "Iz starogo narodnago byta Pšavov," p. 109.

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593 562a "The Lesghian husband is, at times, very cruel to his wife," says Omarov, a Lak by birth, who describes in his excellent article (written 1870) what his own mother had to suffer, how husbands mercilessly beat up their helpless wives, and brothers their sisters.[14]

L'vov, describing the conditions prevailing about 75 years ago, writes of the Avars: "She is considered a mere slave. She is placed on the same level as a domestic beast, in spite of the fact that Islamic law gives her not a few rights. Even the possessions she brings along on her wedding day are hers only theoretically; practically, it is her husband who owns them. She is unable to dispose of her own property, whereas her husband may do with it whatever he wishes. All this is considered a sin neither in the eyes of God nor of man. If his wife proposes to bring the case up before the authorities, her husband will act at once: he either flatters her and so wins her over by 'love', and she out of gratitude concedes her rights to him, or, if she does not, he threatens to divorce her and to keep the *kebin* and thus to dismiss her without any security for the future."[15]

562 695 Another clear proof of the inferiority of Caucasian women is the insignificant participation allowed her in religious matters and law processes.[16] Many of these customs are, doubtless, of Islamic origin; many, however, are not, and the spirit behind such regulations is certainly pre-Islamic.[17]

Often women cannot be witnesses, unless there is at least one male witness present. In this case one male witness plus two female witnesses makes two legal witnesses. That may be poor arithmetic; but that is the actual practice, for example, in Dargwa.[18] Sometimes they cannot be witnesses at all.[19]

Sometimes women are not allowed to take an oath, for example in the District of Hyuraki,[20] or, at most, they may swear on the Koran as is the case in Sirgua.[21] In Hyuraki, the husband takes the oath instead, or, if the woman is not married, her nearest male relative takes it for her.[22] Never has she the right to take the *khatun-tallkh*, an oath, with an obligatory divorce as sanction (*supra*, pp. 134 f).[23]

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[14] "Kak živut Laki," SSKG, III (1870), pp. 4 f.

[15] "Domašnjaja i semejnaja žizn Dagestanskich gorcev Avarskago plemeni," SSKG, III (1870), pp. 31 f. Alichanov claimed that the women of Avaria were very independent (Cf. Hahn, "Putešestvie v Kachetiju i Dagestan (lětom 1898 goda)," SMOMPK, XXXI [1902], p. 93.) However there is no reason to suppose that their condition is more favourable than that of the women in other parts of Daghestan (Cf. Baddeley, *op. cit.*, II, p. 72).

[16] Kovalevskij, *Zakon*, I, p. 141.

[17] Although some of the customs have been influenced by Roman-Byzantine law (e. g., in Chechnia, Khevsuria, Svanetia, and Ossetia, as Kovalevskij believes, *l. c.*), it cannot be denied that laws regulating the position of women in religious and inter-tribal (or legal) matters are mostly purely-Caucasian adats.

[18] "Adaty Darginskich Obščestv," SSKG, VII (1873), pp. 71, 83 f.

[19] "Adaty Darginskich Obščestv," p. 99.

[20] "Adaty Darginskich Obščestv," p. 83.

[21] "Adaty Darginskich Obščestv," p. 70.

[22] "Adaty Darginskich Obščestv," pp. 83, 70, 99.

[23] The *khatun-tallkh* is in itself another form of inequality. A wife may be divorced simply because her husband has sworn falsely. She, however, may never take such an oath.

Women are generally excluded from being conjurors. One of the most common forms of evidence in the *adat* courts is conjury, an oath taken by an established number of relatives of the defendant or plaintiff. Any hesitation, refusal of one of the conjurors to swear, or failure to find the required number of conjurors are considered undeniable evidence. The oath is taken by each of the conjurors either on the Koran, or sometimes toe *khatun-tallkh* must be sworn. The practice of conjury is found among all Caucasian mountain tribes: Cherkess, Chechens, Lesghians, Georgians, neighbouring Tartars, Kumyks, etc.[24] The number of conjurors required depends on the gravity of the crime, the penalty connected with it, and on the social position of the contending parties and conjurors. The following is an example of a catalogue of conjurors established for theft in Mikakhi District.

For stealing sheep:		*For stealing cows:*	
one sheep	3 conjurors	one cow	5 conjurors
two sheep	4 conjurors	two cows	10 conjurors
three sheep	5 conjurors	three cows	12 conjurors
four sheep	6 conjurors	more than three	12 conjurors
more than four	6 conjurors		

For stealing young domestic animals:

one colt less than three years old	6 conjurors
one one-year-old calf	3 conjurors
one two-year-old heifer	5 conjurors
one two-year-old ox	5 conjurors
one three-year-old ox	6 conjurors

This catalogue has been taken from the "Adat collection for the Districts of Dargwa Province."[25] For murder and crimes considered as serious as murder[26] the number of conjurors may be as high as 40. Generally only relatives may be conjurors. This requirement is evidently a reflection of the strong solidarity of the Caucasian sib: to swear falsely would bring ruin to the swearer, and should a large number of conjurors be required, the entire sib, living and dead, may be doomed.

The proof by conjury is recognized by Islamic law, but its existence in the Caucasus need not be attributed to Mohammedanism. (1) Even in Arabia, it pre-existed Islamism. In fact Mohammed merely borrowed and incorporated the *kazama* into his system.[27] (2) Moreover, it is a widespread institution among

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[24] See the various *adat* collections. See also Kovalevskij, *Coutume contemp.*, especially pp. 443 f.; *Code of King Vakhtang VI*, Karst edition, pp. 60, 179.

[25] "Adaty Darginskich Obščestv," SSKG, VII (1873), p. 53.

[26] *Supra*, Chapters XII and XIII.

[27] Goldziher, "Muhammedanisches Recht in Theorie und Wirklichkeit," *Zeitsch. f. vergl. Rechtsw.*, VIII (1889), No. 3, p. 412.

peoples having a patriarchal organization, regardless of religion. We find it among the ancient Indo-European Slavs, Germans, and Ossetes.[28] (3) We also find it among non-Mohammedans of Caucasus.

After this lengthy degression we can offer a few examples to illustrate the relation of conjury to the unequal status of women. In Mugn District (Dargwa Province) women are not allowed to be conjurors. If less than 12 conjurors are required by any *adat*, not only must all conjurors be *male* relatives, but relatives of the *father*.[29] In Hyuraki District[30] and elsewhere[31] female relatives may participate in the conjury only if they are necessary to complete the required number of 40.[32]

The inferior position of the female sex is further expressed in the *adats* determining the amount of bloodwite. Sometimes, it is true, no distinction is made whether a man or a woman is the victim,[33] but sometimes a definite distinction *is* made. The Kurins, for instance, have an established bloodwite of Rs. 250 for the death of a man and only Rs. 125 for the death of a woman.[34] The Ossetine bloodwite for the murder of a man is twice as high as that for a woman.[35]

§ 2. DIVISION OF LABOUR

The NORTHWESTERN CAUCASIANS. It is no longer true that all the work must be done by the female members of the family.[36] The men do the ploughing, woodchopping, hunting, and in general all the heavy work; the women do the usual housework, cook, wash, sew and mend clothes, and work in the garden.[37] Formerly, of course, the situation was quite different. The reports of the 18th and 19th century picture the Cherkess and the Abkhaz

[28] Kovalevskij, *Coutume contemp.*, p. 460.

[29] "Adaty Darginskich Obščestv," p. 60. For *adats* of the Tsudakhar District, see "Adaty Darginskich Obščestv," pp. 111 f.

[30] "Adaty Darginskich Obščestv," p. 84.

[31] "Adaty Darginskich Obščestv," p. 71.

[32] If there are still not enough conjurors, the oath must be repeated till the required number of oaths is reached. ("Adaty Darginskich Obščestv," p. 84.)

[33] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1875), p. 47. When we use the words "crime" and "murder" we understand them in the sense of the *adats*. To be more exact we should rather say "damage" and "homicide." Customary law is not interested in *guilt*. It aims to repair damages done to the family and sib, whether that damage be intentional or accidental. If a horse accidentally kicks and kills a passer-by, both the rider and the owner of the horse become blood-enemies of the victim's sib (Leontovič, II, pp. 45 ff). Since customary law is not interested in guilt, it is not interested in *punishing*. It aims to *repair* the damages, hence it matters little whether the "criminal" himself or another member of his family or sib is "punished."

[34] "Adaty Južno-Dagestanskich Obščestv," p. 7.

[35] Dubrovin, *Istorija*, I, i, p. 340.
The position of the female sex in Khevsuria is somewhat better than elsewhere in the mountains (Požidaev, 106 f). She may even take her meals with her husband (Požidaev, *Gorcy severnogo Kavkaza*, p. 107). The Kumyks allow their wives more rights than are granted to women by the *adats* of the true Caucasians (Dubrovin, *Istorija*, I, ii, p. 639).

[36] Ladyženskij, FT, pp. 199 f.

[37] Ladyženskij, FT, p. 201.

he would be sentenced to death by drowning. In the nineteenth century a heavy fine of 200 oxen and immediate separation were insisted upon instead.[9]

The penalty for raping a boy before puberty is death. Of course, such cases of perversion are very rare.[10] Likewise extremely rare are cases of homosexuality and bestiality,[11] except among certain Cherkess horse-breeders among whom bestiality is more common and the penalty trivial or none at all.[12]

The *adats* have evidently gone through a distinct evolution, from unusual severity imposed exclusively on the adulteress to a more moderate form of punishment affecting both partners. Dubois de Montpéreux observed how a husband, who would clip his wife's hair for adultery, then cut off her ear, arm, or nose and finally kill her, fully in accord with ancient *adats*,[13] would thereby become a blood-enemy of his wife's relatives. He therefore usually preferred to divorce her instead[14] and have the *kalym* refunded.[15] Vasil'kov reported in the beginning of this century that among the Temirgoi illicit intercourse was extremely rare and that *both* partners would be punished very severely. If caught in the act, they would be buried up to their necks and then stoned to death.[16]

The NORTHEASTERN CAUCASIANS. The Chechen customary law likewise imposes very severe penalties for adultery, as the following table clearly shows (Table No. 19).

The most serious sex offenses are those of rape and incest. If an Ingush woman (married or single) is raped, the attacker may be killed on the spot. If he manages to escape, a bitter blood-feud breaks out between the sibs of the offended and offender. In *adat* courts confession of the culprit or the accusation of the victim are considered undeniable evidence. The accused can prove himself not guilty by taking an oath, which must then be confirmed by the statements of five conjurors,[17] two of whom must be relatives. If the defendant hesitates to take the oath or fails to find sufficient conjurors who are convinced of his innocence (and hence who are not afraid of the supernatural sanction attached to such an oath), he must pay a fine of 24 cows if the victim happened to be a married woman,[18] and a horse worth 30 silver rubles, a ram and four kettles of *arrack* if she happened to be unmarried.[19] The ravisher, as usual, must marry the girl he attacked.[20] If the girl has already been engaged to someone,

[9] McLennan, *Studies in Ancient History*, p. 76.
[10] At least in Kabardia, according to Grabovskij, *op. cit.*, p. 43.
[11] *ibid.*
[12] Grabovskij, *op. cit.*, p. 44.
[13] Amputation of the adulteress' ears and nose is a punishment found throughout the Caucasus; today, of course, it is rare. It is indeed interesting to note that a Hittite code (about 1350 B. C.) engraved on a stele has been dug up, which legalized such mutilation in case of adultery (cf. H. C. E. Zacharias, *Protohistory*, p. 258).
[14] Dubois de Montpéreux, *Voyage autour du Caucase*, I, p. 132.
[15] Dubrovin, *l. c.*
[16] "Očerk byta Termirgoevcev," SMOMPK, XXIX (1901), No. 1, p. 102.
[17] For the institution of *conjury* see above, pp. 155 f.
[18] Leontovič, II, p. 172, §§ 140, 142.
[19] Leontovič, II, p. 172, § 144.
[20] Leontovič, II, p. 120, § 24. Other adat collections claim the very opposite, cf. Leontovič, II, p. 172, § 147.